Freedom of Expression in Islam by Mohammad Hashim Kamali
Review by: Asma Afsaruddin
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respondence and manuscripts for passages that illuminate the attitudes of British government officials toward their duties in the Mandate.

As Sherman points out, Britain entered Palestine with "largely unconscious and unexamined assumptions of natural authority that pervaded the entire imperial enterprise" (p. 15), and insufficient awareness that the sun was setting on the enterprise itself. Palestine proved an especially troubling nut to crack, since at issue was not simply administration of a subject people but the resolution of a dispute between two very different peoples for the same land.

Sherman's colonial officials are placed in the midst of this conundrum, seeking to do their best for the British Empire while at the same time doing something for the land and the people and preserving their own skin. As bombs went off and treachery seemed to lurk behind every corner, British officialdom grew increasingly besieged. One former imperial official summed up sentiments: "There was a saying that everyone who came to Palestine came there to a certain degree pro-Jew, but after a time became essentially pro-Arab, and generally ended pro-British" (p. 30).

With an engaging writing style and a superb eye for the telling quotation, Sherman conveys the unraveling of the British Mandate with flair and understanding. Biased to neither Arab nor Jewish perspectives (but sharing his British subjects' distaste for Revisionist Zionism and its paramilitary organs, the Irgun and the Stern Gang), the book remains loyal to the goodness of the Britons' intentions while unflinchingly reporting the often distressing racism that British officers felt towards their colonial subjects.

This book should find two appreciative audiences. The first consists of students who know little of colonialism except that it should be regarded with suspicion. Selections from this book will no doubt draw them in and cause them to rethink (if not necessarily revise) their understanding of the colonial project.

A second audience consists of policy makers currently engaged in solving some of the conundrums that the British left unsolved when they abandoned Palestine in 1948. Those who complain about terrorism, lack of security cooperation, arrogance, and stubbornness will take succor from the knowledge that many of these problems existed a half century ago, often with the parties playing opposite roles from those they play today.

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PHILOSOPHY AND RELIGION

Freedom of Expression in Islam, by Mohammad Hashim Kamali. Cambridge, England: Islamic Texts Society, 1997. ix + 261 pages. Appends. to p. 301. Bibl. to p. 314. Gloss. to p. 330. Index to p. 349. $60.

Reviewed by Asma Afsaruddin

It is a truism among Muslims that Islam ensures human dignity by guaranteeing certain human rights to all and that, above all, it counsels tolerance for the beliefs of others. Such assertions made, however, to outsiders, especially Westerners, often elicit downright skepticism; they are so much at odds, after all, with the images of militant Muslims flitting across Western television screens or with the harsh editorializations on an intolerant, political Islam fed to Westerners in powerful sound-bites. Mohammad Kamali is well-positioned to counteract such skepticism for he draws upon a rich corpus of legal, *hadith* (sayings of the Prophet Muhammad), and *tafsir* (Quran exegesis) material, extrapolating broad moral injunctions which are understood to be consonant with democratic principles that ensure freedom of expression.

The author's basic premise is laid out succinctly in part one of his book. He emphasizes that "the principles of *hisbah*, that is, commanding good and forbidding evil, *nasihah* or sincere advice, *shura* or consultation, *ijtihad*, or independent juristic reasoning, and *haqq al-mu'aradah*, or the right to constructive criticism, all affirm the freedom of speech" (p. 2). This is very much the essence of the book. Part two, titled "Affirmative Evidence," provides examples of the legal reasoning that was undertaken to develop these basic principles into an elaborate code of public conduct, a process that started in the medieval period.

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In the juristic process, the majority of Muslim jurisconsults, especially of the Hanafi school, would come to uphold the importance of *ra'y*, or "personal opinion," as a necessary correlate to the hermeneutic of ijtihad. This in itself underscores the centrality of individual deliberation in legal ratiocination and, as Kamali affirms, entails the recognition of the right to express one's considered opinion.

Modern Muslim legists draw a parallel between "the essential interests" (*al-masalih al-daruriyya*) of the community and "the fundamental rights" provided by modern constitutional law. There are five *masalih* which are to be protected under all circumstances: life, religion, intellect, property, and lineage. Subsumed under life is a potential sixth "interest," that of *'ird*, or human dignity. As Kamali asserts, the difference between "rights" as defined in Western constitutional law and that of "necessities" in Muslim positive law is thus one of terminology rather than of concept. "Call them what you will," he says, "the point is that the Shari'a advocates them and validates their protection" (p. 23). Kamali thus follows in the footsteps of modernist reformers like Rashid Rida (d. 1935) and 'Abd al-Wahhab Khalaf (d. 1956), for example, who similarly believed in an aggrandized role of *maslaha* in modern legal methodology.

One of the most interesting, and possibly provocative, chapters of his book has to do with the issue of freedom of religion (*al-hurriyya al-diniyya*), a basic right that is affirmed in the Quranic verse "there is no compulsion in religion" (*la ikraha fi al-din*; 2:255). As Kamali asserts, this Quranic injunction has been invoked to forbid forcible conversions of non-Muslims to Islam and to protect the rights of religious minorities in Muslim countries. This spirit of tolerance is tested, however, on the question of apostasy in Islam, an offense generally considered to be subject to the death penalty (*hadd*). If modern Muslims feel uneasy about legal retribution on this issue, they are in good company with Kamali and a host of other medieval and modern scholars, who affirm that there is no Quranic prescription to this effect. Among medieval legists, Sufyan al-Thawri (d. 772) and Ibn Taymiyya (d. 1328) did not include apostasy in the list of offenses that merited *hudud* punishments. Prophetic precedence is appealed to by those who argue for the greatest leniency in dealing with apostasy; they point out that the Prophet Muhammad himself did not put anyone to death for apostasy alone nor prescribe any punishment. Apostasy coupled with *hiraba* (treasonous behavior towards the Muslim polity) may incur the death penalty; a simple change of faith, in the Prophet's time, did not warrant its imposition.

In Islamic jurisprudence, there is also a commensurate concern for protecting the individual and the community from the harmful consequences of slanderous, seditious, insulting, and hateful speech, which Kamali deals with in part four. Based upon prescriptions drawn from the Quran and the *sunna* (the Prophet's sayings and deeds), the Shari'a mandates various proscriptions against harmful speech which necessarily curtail an individual's unrestricted right to freedom of expression. Blasphemy, as a special category of harmful speech, is dealt with in great detail and, in some cases, overlaps with the discussion of apostasy.

Kamali succeeds in presenting a rich array of voices, medieval and modern, engaging in legal hermeneutics, especially in the effort "to elevate some of the moral and religious teachings of the Qur'an, the Sunnah and the legal schools, into positive laws for purposes of enforcement" (p. 27). One notable voice missing in his presentation, however, is that of Najm al-Din al-Tufi (or al-Tawfi; d. 1316), a strong proponent of the hermeneutic of maslaha, on account of which he has found favor with modern legal reformists. Early in the book, Kamali quotes the Orientalist scholar Hamilton Gibb as saying, "[t]he Islamic theory of government gives the citizen as such no place or function except as taxpayer and submissive subject" (p. 17). The author provides an important and timely corrective to this bleak perception.

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